

09/813,656  
6/16/05

• RESPONSE DATED: 11/16/2005 •

OA DATED:

### REMARKS

This response is provided to the Office Action of June 16<sup>th</sup>, 2005. With this response, claims 1-15, 46-56 and 74-88 as previously presented remain pending. In view of the following remarks, favorable reconsideration of the pending application is respectfully requested.

#### 35 USC §102(b) Rejection of Claims 1-15 and 46-50

In paragraphs 2 and 3 of the Action, claims 1-15 and 46-50 were rejected as being anticipated by a patent issued to Jackson, et al. (USP 6,097,704) under 35 USC §102(b). In response, Applicant respectfully traverses the basis for such rejection.

It is well settled that in order to support a §102 rejection, the Office must establish that a single, prior art reference teaches each and every element of a claim, as such elements are presented within the rejected claim. In this case, Applicant respectfully submits that the Office has failed to establish this prima facie basis for the §102 rejection of at least claims 1-15 and 46-50.

In particular, despite the characterization in the Action, Applicant cannot find disclosed within Jackson each and every element of the rejected claims, as presented in such claims. As one example, Applicant cannot find support for the Action's characterization that Jackson teaches receiving the wireless data transmission originating from multiple transmit antennae, determining a quality of the wireless data transmission and then displaying a quality parameter of that transmission.

While the Action points to several disparate sections of the Jackson reference as disclosing certain wireless system attributes, nowhere within the Jackson reference is there disclosed the exact invention as claimed in the rejected claims. For example, while Jackson does

09/813,656

16.

09/813,656  
6/16/05

• RESPONSE DATED: 11/16/2005 •

OA DATED:

disclose that certain wireless systems may use multiple transmit and/or receive antennas, nowhere does Jackson disclose generating a transmission signal using multiple transmit antennae and determining the quality of the transmission based on a quality parameter of the transmission. That is, Jackson fails to disclose the identical invention as presented in the rejected claims.

It is respectfully noted that anticipation under 35 USC § 102 requires the disclosure in a single prior art reference of each element of the claim under consideration. *See Verdegaal Bros. V. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ 2d 1051, 1053 (Fed. Cir. 1987).

However, it is not enough, that the prior art reference discloses all the claimed elements in isolation. Rather, “[a]nticipation requires the presence in a single prior reference disclosure of each and every element of the claimed invention, *arranged as in the claim.*” *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984) (citing *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983)) (emphasis added). “The *identical invention* must be shown in as complete detail as is contained in the ... claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989); MPEP § 2131 (emphasis added).

In this case, insofar as the Action has failed to show where in the Jackson reference each and every element of the identical invention is disclosed, Applicant respectfully submits that the Action has failed to establish a prima facie case of anticipation. Accordingly, Applicant respectfully requests that the §102(b) rejection of claims 1-15 and 46-50 be withdrawn.

35 USC §102(b) Rejection of Claims 76-78, 82-84 and 88

09/813,656

17.

09/813,656  
6/16/05

RESPONSE DATED: 11/16/2005

OA DATED:

In **paragraph 4** of the Action, claims 76-78, 82-84 and 88 were rejected as being anticipated by a patent issued to Todd, et al. (USP 6,035,183) under 35 USC §102(b). In response, Applicant respectfully traverses the basis for such rejection.

It is well settled that in order to support a §102 rejection, the Office must establish that a single, prior art reference teaches each and every element of a claim, as such elements are presented within the rejected claim. In this case, Applicant respectfully submits that the Office has failed to establish this prima facie basis for the §102 rejection of at least claims 76-78, 82-84 and 88.

In particular, despite the characterization in the Action, Applicant cannot find disclosed within Todd each and every element of the rejected claims, as presented in such claims. As one example, Applicant cannot find support for the Action's characterization that Todd teaches receiving a wireless transmission that originates from multiple transmit antennae, determining a quality of the wireless data transmission and then displaying a quality parameter of that transmission.

While the Action points to several disparate sections of the Todd reference as disclosing certain wireless system attributes, nowhere within the Todd reference is there disclosed the exact invention as claimed in the rejected claims. That is, Todd fails to disclose the identical invention as presented in the rejected claims.

It is respectfully noted that anticipation under 35 USC § 102 requires the disclosure in a single prior art reference of each element of the claim under consideration. *See Verdegaa Bros. V. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ 2d 1051, 1053 (Fed. Cir. 1987).

However, it is not enough, that the prior art reference discloses all the claimed elements in isolation. Rather, "[a]nticipation requires the presence in a single prior reference disclosure of

09/813,656

18.

09/813,656  
6/16/05

• RESPONSE DATED: 11/16/2005 •

OA DATED:

each and every element of the claimed invention, *arranged as in the claim.*" *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984) (citing *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983)) (emphasis added). "The *identical invention* must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989); MPEP § 2131 (emphasis added).

In this case, insofar as the Action has failed to show where in the Todd reference each and every element of the identical invention is disclosed, Applicant respectfully submits that the Action has failed to establish a prima facie case of anticipation. Accordingly, Applicant respectfully requests that the §102(b) rejection of claims 76-78, 82-84 and 88 be withdrawn.

§103(a) Rejection of claim 51-56, 74 and 75

In paragraphs 4[sic] and 5 of the Action, claims 51-56, 74 and 75 were rejected as being unpatentable over the Jackson reference pursuant to 35 USC §103(a). In response, Applicant respectfully traverses the rejection of such claims.

In rejecting claims 51-56, the Action asserts that the particular limitations of an analog meter and/or LED indicators to display a quality value is merely a design choice. However, in accordance with the argument presented above, this presupposes that the Jackson reference actually discloses or fairly suggests that a determined quality measure of a wireless channel generated using multiple transmit antennae be displayed at all. Accordingly, Applicant respectfully submits that the combination of such an invention, with the additional limitations of an analog meter and/or LED indicators to display a quality value is similarly patentable over the

09/813,656

19.

09/813,656  
6/16/05

RESPONSE DATED: 11/16/2005

OA DATED:

Jackson reference. Insofar as the Action has failed to establish a prima facie basis for the rejection of such claims, Applicant respectfully requests that the rejection of claims 51-56 be withdrawn.

With respect to the rejection of claim 74 and 75, the Action suggests that it would have been obvious to extend the teachings of Jackson to display the quality associated with multiple streams of data. In response, Applicant respectfully traverses the rejection of such claims.

In particular, Applicant respectfully submits that the Action has failed to establish a prima facie basis for such a rejection insofar as the motivation relied upon in the Action does not derive from the reference relied upon. Accordingly, Applicant respectfully submits that the Action has failed to properly establish a prima facie basis for the rejection of claim 74 and 75 as selectively amended, and respectfully requests that the rejection of such claims be withdrawn.

§103(a) Rejection of claim 51-56, 74 and 75

In paragraph 6 of the Action, claims 79-81 and 85-87 were rejected as being unpatentable over the Todd reference pursuant to 35 USC §103(a). In response, Applicant respectfully traverses the rejection of such claims.

In rejection the claims, the Action takes the position that it would have been obvious to extend the teachings of Todd to display the quality value associated with each of multiple spatial streams. However, the Action fails to provide a basis for this conclusion.

Applicant respectfully submits that in order to establish a prima facie basis of obviousness, the Office must provide a basis or justification for any conclusions drawn. That is, if the assertion is that one of ordinary skill in the art would be motivated to extend the teaching of a reference to render a claimed invention obvious, the Office must provide some basis for the

09/813,656

20.

09/813,656

• RESPONSE DATED: 11/16/2005

• OA DATED:

6/16/05

assertion. Moreover, in such an instance the motivation (to extend the teaching of the reference) must come from the reference itself. In this case, the Action has failed to provide any such support, simply rendering a conclusion of obviousness.

Accordingly, Applicant respectfully submits that the Action has failed to properly establish a prima facie basis for the rejection of claim 79-81 and 85-87 and respectfully requests that the rejection of such claims be withdrawn.

#### CONCLUSION

In light of at least the foregoing remarks, Applicant respectfully submits that claims 1-15, 46-56 and 74-88, as selectively amended are in condition for allowance and earnestly requests prompt notice thereof. *Applicant respectfully invites the Examiner to contact the undersigned representative for a telephone conference if it determined that such a conference could lead to allowance of one or more of the pending claims.*

Should it be determined that any additional fee is required, or overage returned, in association with this response, please debit or credit my deposit account number 50-0221 as appropriate.

Respectfully submitted,  
Robert Heath, et al.

Dated: November 16, 2005

by: /s/ Michael A. Proksch / Reg. No. 43,021/

Michael A. Proksch  
Reg. No. 43,021  
Attorney for Assignee

c/o Blakely, Sokoloff, Taylor & Zafman, LLP  
12400 Wilshire Blvd., 7<sup>th</sup> Floor  
Los Angeles, CA 90025  
Telephone: (503) 264-3059

09/813,656

21.